

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-090207
	:	TRIAL NO. B-0409974
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
RICHARD ELLISON,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In five assignments of error, defendant-appellant Richard Ellison challenges his conviction and sentence for aggravated burglary,² kidnapping,³ and abduction.⁴ We affirm.

The facts of this case have been previously addressed by this court in a prior appeal and are unnecessary for the determination of the issues before us.⁵ After his conviction and sentence were affirmed by this court, Ellison sought resentencing because the trial court had failed to properly inform him of postrelease control.

At the resentencing hearing, Ellison asked to be allowed to withdraw his guilty plea. The trial court denied his request. It sentenced Ellison to six years in prison for burglary and kidnapping and to five years for abduction, to be served concurrently. It also gave him credit for the time he had already served. He was ordered to pay court costs and was assessed a \$5000 fine.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² R.C. 2911.11(A)(1).

³ R.C. 2905.01(A)(3).

⁴ R.C. 2905.02(A)(2).

⁵ See *State v. Ellison*, 1st Dist. No. C-050553, 2006-Ohio-2620.

In his first assignment of error, Ellison claims that the trial court “breached the stipulated sentencing terms.” When Ellison entered a plea of guilty in 2005, he was told by the trial court that “there has been some promise made to you or something that the Court said. You understand that your sentence will range anywhere from zero to up to six years, depending on the presentence investigation and a clinic report.” The record indicates that the trial court considered those sources and sentenced Ellison within the range promised. Ellison argues that the trial court should have considered another report issued by Twin Valley Behavioral Healthcare. But the record reflects that the trial court considered that report as well. There is nothing in the resentencing hearing that indicates that the trial court failed to consider the factors that Ellison was told would be considered. His first assignment of error is overruled.

In his second assignment of error, Ellison claims that the trial court improperly enhanced his sentence. But Ellison received the same prison term that he had received the first time he was sentenced. It is true that the trial court added court costs and a fine. But the assessment of court costs was mandatory.⁶ As to the fine, the trial court indicated that Ellison was a published author and that the court believed that there might be proceeds from book sales from which a fine could be paid. Ellison failed to address the issue when given the opportunity. Under these circumstances, we cannot conclude that the imposition of a \$5000 fine demonstrates the vindictiveness contemplated by *North Carolina v. Pearce*.⁷ The second assignment of error is overruled.

⁶ R.C. 120.36 and 2947.23.

⁷ (1969), 395 U.S. 711, 724, 89 S.Ct. 2072.

In his third and fifth assignments of error, Ellison argues that the trial court improperly denied his motion to withdraw his guilty plea⁸ and that his trial counsel was ineffective. Most of what Ellison argues here was considered by this court in the first appeal. We have considered those arguments yet again, and again reject them. The only new argument seems to be that counsel should have called the author of the Twin Valley report to testify at the resentencing hearing. But the trial court had the report from Twin Valley and referred to it during the resentencing hearing. Under these circumstances, Ellison cannot show that the performance of counsel was deficient.⁹ We overrule his third and fifth assignments of error.

Finally, in his fourth assignment of error, Ellison argues that he “was severely prejudiced through the trial court’s commission of an unreasonable number of errors of process.” Much of what Ellison complains of here involves factual mistakes allegedly made during the factfinding phase of the first sentencing hearing. But that sentence was void. Even if it was not void, the trial court was not required to make factual “findings” pursuant to *State v. Foster*.¹⁰

Ellison essentially argues that the mitigating factors should have outweighed the aggravating factors. Following *State v. Foster*, trial courts have discretion to impose prison sentences within the statutory range for the crimes committed. In this case, all the sentences were within the statutory ranges, and Ellison was given no more time than he was told he would receive when he entered his guilty plea. Ellison has not demonstrated that the sentences were so arbitrary, unreasonable, or unconscionable as to connote an abuse of discretion.¹¹ Ellison went to his mother

⁸ See *State v. Boswell*, 121 Ohio St.3d 575, 2009-Ohio-1577, 906 N.E.2d 422.

⁹ See *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052.

¹⁰ 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

¹¹ See *State v. Clark*, 71 Ohio St.3d 466, 470, 1994-Ohio-43, 644 N.E.2d 331; *State v. Henderson*, 1st Dist. Nos. C-060799 and C-060823, 2007-Ohio-5128, ¶7.

and stepfather's home and confronted them with duct tape, handcuffs, a hammer, and a change of clothing. He held them for several hours and injured his stepfather when he attempted to leave the house. He also prevented his mother from calling 911. Despite Ellison's lack of a prior criminal record and his good behavior while in prison, the sentences were completely appropriate.

Within this assignment of error, Ellison makes several additional claims. Some are restatements of arguments he had made in the other assignments of error. As such, they have been addressed elsewhere in this entry. But he also claims the following: that the trial court improperly considered his pro se motions without considering his arguments; that he was improperly indicted for crimes he did not commit such that the dismissal of those charges by the state was not a "concession"; that the trial court ignored his arguments during the hearing; and that the trial court sent hate mail to the prison where he was being held. We have reviewed the record and find no error prejudicial to Ellison in these respects. The fourth assignment of error is overruled.

Having considered and rejected Ellison's five assignments of error, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 31, 2010

per order of the Court _____.
Presiding Judge